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FISCAL IMPACT STATEMENT

LS 6810

BILL NUMBER: HB 1169

NOTE PREPARED: Jan 3, 2014

BILL AMENDED:

SUBJECT: Public Meetings.

FIRST AUTHOR: Rep. Kersey

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill amends the definition of "meeting" for purposes of the Open Door Law to include a gathering that occurs by electronic means including by electronic mail. It provides that communications between members of a governing body by electronic mail qualify as "gatherings" for purposes of the law prohibiting a majority of the governing body from holding a series of gatherings for the purpose of taking official action upon public business.

Effective Date: July 1, 2014.

Explanation of State Expenditures: *Summary* - This bill provides that electronic mail is included in the definition of "meeting" for the purposes of the Open Door Law. The bill also provides that electronic mail communications between members of a governing body are considered "gatherings" under IC 5-14-1.5-3.1.

If requests for informal or formal opinions by the Public Access Counselor increase, then expenses for the Public Access Counselor would increase. Civil actions could increase concerning alleged violations of the Open Door Law as a result of this bill. Judicial remedies available include obtaining a declaratory judgment; enjoining continued, threatened, or future violations of the Open Door Law; declaring a policy, decision, or final action void; or the imposition of a civil penalty. Civil penalties imposed against a public agency are paid from the agency's budget.

Additional Information - Current law allows governing bodies of public agencies to meet using electronic communications (not including electronic mail). The meeting must meet all other requirements of the Open Door Law, and a majority of the governing body must adopt a policy regarding the use of meetings by

electronic communication. If a meeting by electronic communication is conducted, the governing body is required to have the greater of two members or one-third of the governing body physically present at the meeting place and take only roll call votes. A member of a governing body of a public agency of a political subdivision who participates in a meeting by electronic communication cannot participate in any final action and may not be counted as present, unless specifically authorized by statute.

“Public agency” as used in this bill is defined in IC 5-14-1.5-2 as: (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the Department of Local Government Finance or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the State Board of Accounts that is required by statute, rule, or regulation.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana Gaming Commission established by IC 4-33, including any department, division, or office of the Commission.

(7) The Indiana Horse Racing Commission established by IC 4-31, including any department, division, or office of the Commission.

Serial Meetings: Serial meetings are a series of small meetings held by a governing body in an attempt to avoid the requirements of the Open Door Law, and they are prohibited by current statute. A serial meeting occurs when members of a governing body participate in a series of at least two meetings and all of the following conditions are met:

(1) One gathering is attended by at least three members but less than a quorum;

(2) The other gatherings include at least two members of the governing body;

(3) The sum of different members participating at least equals a quorum;

(4) The gatherings concern the same subject matter and are held within a period of seven days; and

(5) The gatherings are held to take official action on public business.

For purposes of the laws governing serial meetings, a member of the governing body attends by being present in person or by telephonic or other electronic means, excluding electronic mail.

Explanation of State Revenues: *Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the

automated record keeping fee (\$7) are deposited into the state User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Civil penalties imposed as a result of violating the Open Door Law are deposited in the Public Access Counselor Education Fund. There were no civil penalties collected during FY 2013.

Explanation of Local Expenditures: Local units and agencies are included in the definition of public agency. [Please refer to *Explanation of State Expenditures* for an explanation of this bill's impact on public agency expenditures.]

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Public Access Counselor; All.

Local Agencies Affected: All.

Information Sources: Auditor of State data.

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